

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

A.G.W., <i>et al.</i> ,)	
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)	
Plaintiffs,)	
)	
v.)	No. 1:21-cv-01112-TSC
)	
XAVIER BECERRA, Secretary)	
of Health and Human Services, <i>et al.</i> ,)	
)	
Defendants.)	
)	

JOINT STATUS REPORT

In accordance with the Court’s April 24, 2024 order, Plaintiffs A.G.W. et al., Federal Defendants Xavier Becerra et al., and Intervenor-Defendant State of Tennessee (collectively, the “parties”) respectfully submit the following joint status report.

1. Plaintiffs filed their Complaint on April 23, 2021 (ECF No. 4) and, as amended on May 24, 2021 (ECF No. 23), challenged a January 8, 2021 decision by the Federal Defendants to approve “TennCare III” as a Medicaid demonstration project under Section 1115 of the Social Security Act, 42 U.S.C. § 1315.
2. The State of Tennessee moved to intervene as a Defendant on May 20, 2021 (ECF No. 19). The Court granted the unopposed motion on August 5, 2021. Minute Order, entered Aug. 5, 2021.
3. On August 11, 2021, with the Plaintiffs’ agreement, the Federal Defendants filed an unopposed motion to hold the case in abeyance while they reopened the federal comment

period on the approval challenged in the lawsuit and reconsidered the challenged decision (ECF No. 29). The motion noted that the approval of TennCare III would remain in effect during the abeyance. *See id.* ¶ 3.

4. The Court granted the motion that day: “This action is hereby STAYED pending the outcome of the new comment period pertaining to the challenged agency decision of January 8, 2021. The parties shall file a Joint Status Report and propose order within 30 days of whatever decision is issued following the new comment period.” Minute Order, entered Aug. 11, 2021.
5. On August 10, 2021, CMS opened a new 30-day federal comment period to receive input from the public on the approved TennCare III project.
6. On June 30, 2022, the Federal Defendants wrote to Tennessee proposing changes to the approved project, including its aggregate financing cap and sharing savings structure and authorization to use a closed drug formulary. Both of these provisions of the TennCare III waiver were subject matter of the Amended Complaint, *see* ECF No. 23, ¶¶ 4, 6, 126-141.
7. On August 30, 2022, the State of Tennessee submitted an amendment to TennCare III, known as “Amendment 4.”
8. On September 6, 2022, Federal Defendants opened a new 30-day federal comment period to receive input from the public on the State’s proposed Amendment 4.
9. On August 4, 2023, the Federal Defendants approved Amendment 4, which approved Tennessee’s requests to make certain modifications to the project approved on January 8, 2021. The January 8, 2021 TennCare III approval otherwise remains in effect.
10. On September 5, 2023, the parties submitted a Joint Status Report and Motion for Extension of Stay (ECF No. 32, 33). Plaintiffs stated their view that Federal Defendants’ August 4, 2023 approval did not address all of the issues raised in the Amended Complaint, notably the

- 10-year time span for the approval and the waiver of three-months’ retroactive coverage. ECF No. 32 at ¶ 10. The parties indicated that they would like the opportunity to determine whether they can agree on a proposal to the Court for further proceedings and asked the Court to continue the stay until November 3, 2023, by which date they would file another joint status report. *Id.* at ¶ 12. The Court granted the motion. Minute Order, entered Sept. 7, 2023.
11. In the Joint Status Report and Motion to Lift Stay filed November 3, 2023 (ECF No. 34, 35), Plaintiffs indicated their intent to file a supplemental complaint in the case. The Court entered an order lifting the stay and directing the Plaintiffs to file any motion for leave to file the supplemental complaint by December 22, 2023. Minute Order, entered Nov. 6, 2023.
12. Plaintiffs filed an unopposed Motion for Leave to File Supplemental Complaint on December 22, 2023, which the Court granted. Minute Order, entered Dec. 27, 2023. The Supplemental Complaint (ECF No. 37) challenges the January 8, 2021 approval of TennCare III, as amended by the August 4, 2023 approval. *See* ECF No. 37 at ¶¶ 10, 11, 181-195.
13. On February 20, 2024, Federal Defendants requested an extension of time to respond to the Supplemental Complaint (ECF No. 38). The Court granted the motion, moving the response deadline for Federal Defendants and Intervenor-Defendant to April 29, 2024.
14. On April 23, 2024, Federal Defendants’ filed an unopposed Motion for Voluntary Remand seeking a remand “of no longer than 60 days so that the Secretary can revisit the challenged decision and, at a minimum, provide additional explanation in support of that decision.” ECF No. 39 at 1. The following day, the Court granted the motion, issued a stay pending further order of the Court, and ordered the parties to file a joint status report no later than June 28, 2024. The Court directed the parties to inform the Court of the status of Federal Defendants’ review, advise the Court how they wish to proceed, and if necessary, propose a schedule to

govern further proceedings. Minute Order, entered April 24, 2024. Pursuant to that Order, the parties inform the Court as follows:

15. On June 21, 2024, the Federal Defendants sent a letter to Tennessee reaffirming the August 4, 2023 approval and providing “additional explanation for the decision to approve TennCare III, as amended.” Letter from Daniel Tsai, Deputy Adm’r & Dir., Ctrs. for Medicare & Medicaid Servs., to Stephen Smith, Dir. of TennCare 1 (June 21, 2024), <https://www.medicaid.gov/medicaid/section-1115-demonstrations/downloads/tn-tenncare-iii-cms-ltr-to-state.pdf>. In the June 2024 Letter, Federal Defendants did not withdraw any “authority currently provided for in the modified TennCare III demonstration.” *Id.* at 2.
16. Plaintiffs respectfully request an additional three weeks to consider the contents of the letter and determine how they wish to proceed with this case. They ask that the Court allow the parties to submit a joint status report on or before July 12, 2024, in which the parties will advise the Court how they wish to proceed, and if necessary, propose a schedule to govern further proceedings. Federal Defendants and Intervenor-Defendant do not oppose this request.

Dated: June 28, 2024

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Respectfully submitted,

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

A.G.W., *et al.*,

Plaintiffs,

V.

XAVIER BECERRA, Secretary
of Health and Human Services, *et al.*,

Defendants.

No. 1:21-cv-01112-TSC

[PROPOSED] ORDER

The parties are ordered to file a Joint Status Report by July 12, 2024 advising the Court how they wish to proceed in this matter, and, if necessary, proposing a schedule to govern further proceedings.

Dated: _____

Judge Tanya S. Chutkan